IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.801 OF 1990

Bank of Maharashtra .. Plaintiffs.

Versus

Prithviraj Ratanchand Mehta & Ors. .. Defendants.

Ms.S.G.Sagar i/b.Vimal Gupta for plaintiffs.

None for defendants.

CORAM : A.M.KHANWILKAR, J.

DATE : 29th September, 2007.

P.C.:

1. None appears for the Defendant No.2 though served. No written statement has been filed on behalf of the Defendant No.2. Suit is already decreed against the Defendant No.1 on admission. The matter is now placed before the Court to proceed against the Defendant No.2 as undefended suit. Accordingly, I have proceeded with the suit against the Defendant No.2.

2. In substance, the Plaintiffs' case is that the

financial facility of bill discounting was sanctioned to the Defendant No.1 for the purpose of his business. The Defendant No.2. is the drawee of the amount availed by the Defendant No.1. Several Hundies were drawn by the Defendant No.1. Out of several Hundies, five Hundies being (1) Hundi dated 20th December, 1986, for Rs.23,001.00, (2) Hundi dated 20th December, 1986 for Rs.21,097.00, (3) Hundi dated 6th February, 1987 for Rs.19,623.00, (4) Hundi dated 6th February, 1987 for Rs.25,732.00 and (5) Hundi dated 6th February, 1987 for Rs.21,940.00 were drawn by the Defendant No.1 on the Defendant No.2. The said Hundies were payable within 60 days after date. After the said Hundies were accepted by the Defendant No.2, the Defendant No.1 discounted the said five Hundies through the Plaintiffs Chembur Branch. The Defendant No.1, therefore became liable to repay the amount of the said Hundies. Inspite of legal notice, as the amount was not paid, the Plaintiffs have been constrained to file the present suit for the following reliefs :-

> "a) That the Defendants be jointly and severally ordered and decreed to pay to the Plaintiffs a sum of Rs.1,83,810.60 (Rupees One lakh eighty three thousand eight hundred ten and

Paise sixty only) inclusive of interest till the date of the suit and further interest on the said amount of Rs.1,11,393.00 at 17.5% per annum from the date of the suit till payment.

b) That the Defendants be ordered and decreed to pay to the Plaintiffs costs of the suit and other costs of Notice etc. as per provisions of Order XXA of Civil Procedure Code."

3. As mentioned earlier, the suit is already decreed against the Defendant No.1 on admission. Insofar as the Defendant No.2 is concerned, the Plaintiffs have relied on the affidavit of evidence in lieu of examination-in-chief sworn by Mr.Govind S.Gulgule, Manager of the Plaintiffs Bank. Besides, the affidavit of evidence, the Plaintiffs are relying on compilation of documents consisting of the following documents :-

1. Letter of Authority
2. Letter of Request dated 29/10/1986
3. Agreement dated 29/10/1986
4. Letter of Request dated 18/02/1987
5. Two Bills of Exchange dated 20/12/1986
6. Three Bills of Exchange dated 06/02/1986
7. Copy of Plaintiffs' letter dated

17/07/1987

8. Copy of Notary Certificate dated 27/07/1988

9. Copy of Balance Confirmation letter dated 23/05/1989

10. Copy of Plaintiffs' letter dated 08/12/1989

4. From the pleadings as well as the oral evidence and documents on record, the Plaintiffs have established the liability of the Defendants to pay the suit amount to the Plaintiffs along with interest. The Plaintiffs are claiming the agreed rate of interest of 17.5% per annum as stated in Agreement dated 29th October, 1986. Besides, the transactions between the parties being the commercial transactions, the Plaintiffs are entitled for the interest @17.5% per annum. In fact, the Defendant No.1 has admitted his liability to pay the amount as demanded by the Plaintiffs.

5. The Defendant No.2 has not chosen to appear inspite of service nor filed any written statement, in my view, on considering the material placed before the Court by the Plaintiffs, the Plaintiffs have made out a good ground for decreeing the suit in terms of prayer clause (a) against the Defendant No.2 as well.

6. As the liability of the Defendant No.2 was joint and several along with the Defendant No.1 to repay the suit amount, accordingly, the suit is decreed in terms of prayer clause (a) against the Defendant No.2 with costs, in exercise of powers under Order 8 Rule 10 of the Code of Civil Procedure.

7. Prayer clause (a) of the suit reads thus :-

> "a) That the Defendants be jointly and severally ordered and decreed to pay to the Plaintiffs a sum of Rs.1,83,810.60 (Rupees One lakh eighty three thousand eight hundred ten and Paise sixty only) inclusive of interest till the date of the suit and further interest on the said amount of Rs.1,11,393.00 at 17.5% per annum from the date of the suit till payment.

8. Decree be drawn up accordingly against the Defendant No.2.

(A.M.Khanwilkar, J.)